

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 178

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO THE ISSUANCE OF REVENUE BONDS BY POLITICAL SUBDIVISIONS; AMENDING SECTION 50-1029, IDAHO CODE, TO REVISE AND ADD DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1030, IDAHO CODE, TO PROVIDE FOR AUTHORITY TO ISSUE AIRPORT REVENUE BONDS TO FINANCE AIRPORT FACILITIES TO BE HELD BY THE POLITICAL SUBDIVISION OF THE STATE OR REGIONAL AIRPORT AUTHORITY AS DEFINED BY LAW AND TO ISSUE SPECIAL FACILITY BONDS TO FINANCE AIRPORT FACILITIES FOR PRIVATE PERSONS, ASSOCIATIONS AND CORPORATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1035, IDAHO CODE, TO PROVIDE FOR ELECTIONS FOR THE ISSUANCE OF REVENUE BONDS FOR ELECTRIC SYSTEMS AND TO ALLOW FOR ISSUANCE OF AIRPORT REVENUE BONDS AND SPECIAL FACILITY BONDS; AND AMENDING SECTION 50-1039, IDAHO CODE, TO PROVIDE THAT SPECIAL FACILITY BONDS ISSUED TO FINANCE AIRPORT FACILITIES AND AIR NAVIGATION FACILITIES FOR PRIVATE PERSONS, ASSOCIATIONS AND CORPORATIONS SHALL BE SECURED BY A DEED OF TRUST, MORTGAGE OR OTHER SECURITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 50-1029, Idaho Code, be, and the same is hereby amended to read as follows:

50-1029. DEFINITIONS. For the purpose of this act, unless a different meaning clearly appears from the context, the following terms shall be ascribed the following meanings:

(a) The term "works" shall include water systems, drainage systems, sewerage systems, recreation facilities, off-street parking facilities, ~~air-navigation~~ airport facilities and air navigation facilities, electric systems or any of them as herein defined;

(b) The term "water system" shall include reservoirs, storage facilities, water mains, conduits, aqueducts, pipelines, pumping stations, filtration plants, and all appurtenances and machinery necessary or useful for obtaining, storing, treating, purifying or transporting water for domestic uses or purposes. The term "domestic uses or purposes" includes by way of example but not by way of limitation the use of water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic purposes;

(c) The term "sewerage system" shall include intercepting sewers, outfall sewers, force mains, collecting sewers, pumping stations, ejector stations, treatment plants, structures, buildings, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, transportation, treatment, purification, and disposal of the sewage of any city or any part of territory included within the territorial limits of any city;

(d) The term "off-street parking" shall include all machinery, equipment and appurtenances, including lands, easements, rights-of-way and buildings required, necessary or useful for the parking of motor vehicles on lands or places other than public highways;

(e) The term "airport facilities and ~~air-navigation~~ air navigation facilities" shall include land acquisition, construction costs, buildings, equipment, and other necessary appurtenances, either wholly or partly within or without the corporate limits of such ~~city~~ political subdivision of the state or owned or operated by a regional airport authority as defined by law, or wholly or partly within or without the state of Idaho, which are hereby deemed to be for a public purpose, which facilities are to be financed for, or to be leased, sold or otherwise disposed of to private persons, associations or corporations, or to be held by the political subdivision of the state or regional airport authority as defined by law;

(f) The term "rehabilitate existing electrical generating facilities" shall include the reconstruction, replacement, and betterment of existing generation facilities, properties and other related structures, together with all necessary equipment and appurtenances related thereto, used in or useful for the generation of electricity, including power plants, turbine generators, dams, penstocks, step-up transformers, electrical equipment and other facilities related to hydroelectric production plants, and related facilities for flood control, environmental, public recreation and fish and wildlife mitigation and enhancement purposes made necessary in order to comply with applicable state and federal requirements, but does not include transmission and distribution lines and their related structures, equipment and appurtenances-;

(g) The term "drainage system" shall include ditches, channels, creeks, ponds, intake structures, diversion structures, levies, storm sewers, pump stations, force mains, buildings, easements, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, treatment and disposal of any surface water, nuisance ground or subsurface water or stormwater of any city; and

(h) The term "electric system" shall include all electric generation, transmission and distribution facilities comprising a municipal electric system and used to supply electricity to customers located within the service area of such system established by law, including all properties, structures, facilities, equipment and appurtenances used in or useful for the generation, transmission and distribution of electricity. The term "electric system" includes, by way of example, but not by way of limitation, power plants for the generation of electricity by any means, substations, transformers, transmission lines, distribution lines, and all other facilities, equipment and appurtenances necessary or desirable in connection with the generation, transmission or distribution of electricity, including energy conservation, public purpose and environmental facilities, programs and measures, and joint electric facilities as defined in section 50-342A, Idaho Code.

SECTION 2. That Section 50-1030, Idaho Code, be, and the same is hereby amended to read as follows:

1 50-1030. POWERS. In addition to the powers which it may now have, any
2 city shall have power under and subject to the following provisions:

3 (a) To acquire by gift or purchase and to construct, reconstruct, im-
4 prove, better or extend any works within or without the city, or partially
5 within or partially without the city, or within any part of the city, and
6 acquire by gift or purchase lands or rights in lands or water rights in con-
7 nection therewith, including easements, rights-of-way, contract rights,
8 leases, franchises, approaches, dams and reservoirs; to sell excess or sur-
9 plus water under such terms as are in compliance with section 42-222, Idaho
10 Code, and deemed advisable by the city; to lease any portion of the excess
11 or surplus capacity of any such works to any party located within or without
12 the city, subject to the following conditions: that such capacity shall be
13 returned or replaced by the lessee when and as needed by such city for the
14 purposes set forth in section 50-1028, Idaho Code, as determined by the city;
15 that the city shall not be made subject to any debt or liability thereby; and
16 the city shall not pledge any of its faith or credit in aid to such lessee;

17 (b) To rehabilitate existing electric generating facilities;

18 (c) To exercise the right of eminent domain for any of the works, pur-
19 poses or uses provided by this act, in like manner and to the same extent as
20 provided in section 7-720, Idaho Code;

21 (d) To operate and maintain any works or rehabilitated existing elec-
22 trical generating facilities within or without the boundaries of the city,
23 or partially within or without the boundaries of the city, or within any part
24 of the city;

25 (e) To issue its revenue bonds hereunder to finance, in whole or in
26 part, the cost of the acquisition, construction, reconstruction, improve-
27 ment, betterment or extension of any works, or to finance, in whole or in
28 part, the cost of the rehabilitation of existing electrical generating fa-
29 cilities;

30 (f) To prescribe and collect rates, fees, tolls, or charges, includ-
31 ing the levy or assessment of such rates, fees, tolls or charges against gov-
32 ernmental units, departments or agencies, including the state of Idaho and
33 its subdivisions, for the services, facilities and commodities furnished by
34 such works, or by such rehabilitated existing electrical generating facili-
35 ties, and to provide methods of collections and penalties, including denial
36 of service for nonpayment of such rates, fees, tolls or charges;

37 (g) To pledge an amount of revenue from such works or rehabilitated ex-
38 isting electrical generating facilities, ~~(including improvement, better-~~
39 ~~ment or extensions thereto, thereafter constructed or acquired),~~ sufficient
40 to pay said bonds and interest as the same shall become due, and to create
41 and maintain reasonable reserves therefor. Such amount may consist of all
42 or any part or portion of such revenues. In determining such cost, there may
43 be included all costs and estimated costs of the issuance of said bonds; all
44 engineering, inspection, fiscal and legal expenses and interest which it is
45 estimated will accrue during the construction period and for six (6) months
46 thereafter on money borrowed or which it is estimated will be borrowed pur-
47 suant to sections 50-1027 through 50-1042, Idaho Code, and the costs of any
48 bond reserve funds or working capital deemed necessary in connection with
49 the bond issue;

1 (h) In the procurement of off-street parking sites, facilities,
2 equipment and appurtenances, any city shall have power, in addition to
3 those heretofore conferred, to pledge the net revenues to be derived from
4 on-street parking facilities not otherwise pledged, to be combined with the
5 rates, fees, tolls and charges to be derived from the operation of off-street
6 parking facilities, after the payment of all operative and maintenance
7 costs, to the payment of revenue bonds and interest thereon issued under the
8 authority of the revenue bond act;

9 (i) To issue bonds for the purpose of refunding any bonds theretofore
10 issued under authority of the revenue bond act and to pay accrued interest
11 and applicable redemption premiums on the bonds to be refunded, if the bonds
12 to be refunded are due, callable or redeemable by their terms on or prior to
13 the date that the refunding bonds are issued, or will become due, callable
14 or redeemable by their terms within twelve (12) months thereafter, or if the
15 bonds to be refunded, even though not becoming due, callable or redeemable
16 within such period, are voluntarily surrendered by the holders thereof, for
17 cancellation at the time of the issuance of the refunding bonds. All or part
18 of any issue may be refunded and all or part of several issues may be refunded
19 into a single issue of refunding bonds. There may be included with the re-
20 funding bonds, as part of a single issue, or in combination in one (1) or more
21 series, bonds for any other purpose or purposes for which bonds are autho-
22 rized to be issued under the revenue bond act. Refunding bonds shall be is-
23 sued and secured in such manner as may be provided in the proceedings autho-
24 rizing their issuance and as otherwise provided in the revenue bond act, and
25 such changes may be made in the security and revenue pledged to the payment of
26 the bonds so refunded, as provided by the governing body in the proceedings
27 authorizing such bonds. No election on the issuance of refunding bonds shall
28 be required, but if by an increase in the amount of bonds or by changes in
29 the security or pledged revenues, the requirements of the constitution for
30 an election shall become applicable, or if refunding bonds are combined into
31 a single issue with bonds authorized for nonrefunding purposes, then such
32 bonds with changes in security or revenues, or such bonds in excess of the
33 amount of bonds refunded, as the case may be, must have been approved at an
34 election as otherwise provided in the revenue bond act and the constitution.
35 Refunding bonds may be exchanged for not less than a like principal amount of
36 bonds authorized to be refunded, may be sold, or may be exchanged in part and
37 sold in part. If sold, the proceeds of the sale, not required for the payment
38 of expenses, and in any event, in an amount sufficient to assure the retire-
39 ment of the bonds refundable, when such bonds become available for retire-
40 ment, if not applied to a simultaneous payment and cancellation of the bonds
41 refunded shall be escrowed with a bank or trust company and may be invested
42 in United States government obligations or in obligations unconditionally
43 guaranteed by the United States of America in such manner as may be provided
44 in the authorizing proceedings;

45 (j) To issue its revenue bonds for airport facilities and air nav-
46 igation facilities to be held by the political subdivision of the state
47 or regional airport authority as defined by law payable solely from fees,
48 charges, rents, payments, grants or any other revenues derived from the
49 airport or any of its facilities, structures, systems of projects, or from
50 any land, facilities, buildings, projects or other property financed by such

1 bonds; and to issue special facility bonds for airport facilities and air
 2 navigation facilities to be financed for, or to be leased, sold or otherwise
 3 disposed of to private persons, associations or corporations, to pledge to
 4 the payment of such bonds the fees, charges, rents, payments, grants, or
 5 any other revenues from the financed facilities and to secure such bonds
 6 by a deed of trust, mortgage or other lien on the financed property or by
 7 other security or credit enhancement; and neither airport revenue bonds nor
 8 special facility bonds shall be secured by the full faith and credit or the
 9 taxing power of the political subdivision of the state or regional airport
 10 authority as defined by law.

11 SECTION 3. That Section 50-1035, Idaho Code, be, and the same is hereby
 12 amended to read as follows:

13 50-1035. ORDINANCE PRIOR TO CONSTRUCTION -- ELECTION. Before any city
 14 shall construct or acquire any works or rehabilitated existing electrical
 15 generating facilities under this chapter, the council of such city shall en-
 16 act an ordinance or ordinances which shall, (a) set forth a brief and gen-
 17 eral description of the works or rehabilitated existing electrical gener-
 18 ating facilities, and if the same are to be constructed, a reference to the
 19 preliminary report or plans and specifications which shall theretofore have
 20 been prepared and filed by an engineer chosen for that purpose; (b) set forth
 21 the cost thereof estimated by the engineer chosen as aforesaid; (c) order the
 22 construction or acquisition of such works or the rehabilitation of such ex-
 23 isting electrical generating facilities; (d) direct that revenue bonds of
 24 the city shall be issued pursuant to this chapter in such amount as may be
 25 necessary to pay the cost of the works or rehabilitated existing electrical
 26 generating facilities; and (e) contain such other provisions as may be nec-
 27 essary in the proposal.

28 Such ordinance shall be passed, approved and published as provided by
 29 law for the enactment of general ordinances, but such city shall not incur
 30 or authorize in any year any indebtedness or liability under said ordinance
 31 exceeding in that year, the income and revenue provided for it for such year,
 32 without the assent of two-thirds (2/3) of the qualified electors of such
 33 city voting at an election held for the purpose of authorizing or refusing
 34 to authorize the indebtedness or liability provided for in said ordinance;
 35 provided, that any city may, with the assent of a majority of the qualified
 36 electors voting at an election to be held for such purpose, issue revenue
 37 bonds for the purpose of providing funds to own, purchase, construct, extend
 38 or equip, within and without the corporate limits of such city, water sys-
 39 tems, sewerage systems, water treatment plants, sewerage treatment plants,
 40 electric systems, or to rehabilitate existing electrical generating facili-
 41 ties, the principal and interest of which to be paid solely from the revenue
 42 derived from rates and charges for the use of, and the service rendered by
 43 such systems, plants and facilities. In accordance with section 3E, article
 44 VIII of the constitution of the state of Idaho, any political subdivision
 45 of the state or regional airport authority as defined by law, operating an
 46 airport may issue revenue bonds payable solely from fees, charges, rents,
 47 payments, grants or any other revenues derived from or relating to airport
 48 facilities and air navigation facilities to finance the costs of acquiring,
 49 constructing, installing and equipping airport facilities and air naviga-

tion facilities and such bonds shall not be secured by the full faith and credit or the taxing power of the political subdivision of the state or regional airport authority as defined by law.

Said ordinances shall provide for the holding of said election in accordance with the dates authorized in section 50-405, Idaho Code, by the county clerk in accordance with the provisions of title 34, Idaho Code. The notice of election shall set forth the purpose of said ordinance, the amount of bonds authorized by it, the maximum number of years from their respective dates for which such bonds may run, the voting places, the hours between which the polls will be open and the qualifications of voters who may vote thereat. In all other respects such election shall be conducted as are other city elections. The voting at such elections must be by ballot, and the ballots used shall be substantially as follows:

"In favor of issuing revenue bonds for the purposes provided by Ordinance No."

"Against the issuance of revenue bonds for the purposes provided by Ordinance No."

If, at such election, the required vote is in favor of issuing such revenue bonds, then such city may issue such bonds and create such indebtedness or liability in the manner and for the purpose specified in said ordinance.

SECTION 4. That Section 50-1039, Idaho Code, be, and the same is hereby amended to read as follows:

50-1039. LIEN OF BONDS. All bonds of the same issue shall, subject to the prior and superior rights of outstanding bonds, claims or obligations, have prior and paramount lien on the revenue of the works or rehabilitated existing electrical generating facilities for which said bonds have been issued, except that where provision is made in the ordinance authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedures or restrictions provided in such ordinance, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such ordinance. All bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, date of sale, date of execution, or date of delivery, by a lien on said revenue in accordance with the provisions of the Revenue Bond Act and the ordinance authorizing said bonds. Special facility bonds issued for airport facilities and air navigation facilities to be owned by private persons, associations or corporations and not by the political subdivision of the state or regional airport authority as defined by law shall be additionally secured by a deed of trust, mortgage or other lien on the facilities or other security or credit enhancement provisions.